

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF NEW YORK

UNITED STATES OF AMERICA,

Petitioner,

DECISION AND ORDER
08-MC-30S

v.

FRANK A. DIBLASI,

Respondent.

1. On May 5, 2008, Petitioner, United States of America, by its trial attorney, Bartholomew Cirenza, filed a petition with this Court for an Order to compel respondent, Frank A. Diblasi to comply with Internal Revenue Service (IRS) summons served on him July 25, 2007. (Docket No. 1).

2. Petitioner has established, through declaration, that: (1) the IRS is conducting an investigation pursuant to a legitimate purpose (i.e., the collection of assessed and unpaid federal employment tax liabilities of Respondent Diblasi); (2) the information requested in the summons, including detailed accounts receivable list of all money due to Respondent Diblasi (or due to his business), including each accounts receivable name, address, telephone number, and amount due for each accounts receivable, is relevant to the IRS' investigation; (3) the information sought is not already in the possession of the IRS; and (4) all administrative steps required by the Internal Revenue Code of 1986 (26 U.S.C.), as amended, have been followed.

3. Respondent has opposed enforcement of the IRS's summons on the ground that the information requested therein includes confidential communications which he is

precluded from disclosing to the IRS, absent an order by this Court. Conversely, Petitioner has argued that the identity of Respondent's clients are not confidential communications and are not otherwise protected from disclosure to the IRS in compliance with its summons.

4. On October 24, 2008, Bartholomew Cirenza, representing Petitioner and Gary D. Borek, representing Respondent Diblasi, appeared before this Court for oral argument concerning the instant petition for order to compel Respondent Diblasi to comply with the IRS' summons.

5. After giving due consideration to oral arguments as well as the written submissions of the parties, this Court determines that the identities of an attorney's clients are not confidential communications. Accordingly, this information must be disclosed to the IRS in compliance with a summons. See Colton v. United States, 306 F.2d 633, 637 (2d Cir. 1962) (citing United States v. Pape, 144 F.2d 778 (2d Cir. 1944), cert. denied, 323 U.S. 752, 65 S.Ct. 86, 89 L.Ed. 602 (1944)).

6. For the foregoing reasons, this Court will grant the Petition to Enforce the IRS Summons, filed by Petitioner, United States of America. Respondent shall appear before Revenue Officer Eric C. Justice, or his designated representative, at 2:00 p.m., on December 2, 2008, at the offices of the Internal Revenue Service located at 130 S. Elmwood Avenue, Buffalo, New York, then and there to be sworn, to give testimony, and to produce the books, records, papers, and other data as demanded by the summons served upon him on July 25, 2007, including, without limitation, the identities of all individual clients included in his current list of accounts receivables, for examination and for copying by photographic or other mechanical means of reproduction, with such

examination and copying to continue from day-to-day until completed.

IT IS HEREBY ORDERED, that Petitioner's Petition to Enforce IRS Summons (Docket No. 1) is GRANTED.

FURTHER, that Respondent shall appear before Revenue Officer Eric C. Justice, or his designated representative, at 2:00 p.m., on December 2, 2008, as directed herein. Respondent's failure to do so could result in contempt proceedings against him.

FURTHER, that counsel shall appear before this Court on December 18, 2008 at 9:00 a.m., for a status conference to report on Respondent's compliance.

SO ORDERED.

Dated: November 17, 2008
Buffalo, New York

/s/William M. Skretny
WILLIAM M. SKRETNY
United States District Judge